

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

3:12-cv-735

3:05-cr-227

AVERY SHANDEL JAMES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**ORDER**

**THIS MATTER** is before the Court on its own motion.

Petitioner has filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255, with alternative claims for relief pursuant to 28 U.S.C. § 2241, writ of coram nobis, and writ of audita querela, in light of United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc). (Doc. No. 3: Motion). Petitioner previously sought relief under § 2255, which was denied. (Case No. 3:09-cv-344, Doc. No. 1: Motion; Doc. No. 23: Amended Motion; Doc. No. 39: Order).

The record does not show that Petitioner has obtained authorization from the United States Court of Appeals for the Fourth Circuit to pursue another § 2255 motion. A similar case is currently pending before the Fourth Circuit regarding whether a petitioner may obtain Simmons relief under § 2241 when he is barred from filing a successive § 2255 motion. See United States v. Surratt, 14-6851, 2015 U.S. App. LEXIS 20881 (4th Cir. 2015) (en banc oral argument scheduled March 22, 2016). Accordingly, the Court finds that this case should be stayed until the Fourth Circuit renders a decision in Surratt.

**IT IS, THEREFORE, ORDERED** that this matter is **STAYED** pending further order of the Court.

Signed: March 21, 2016

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.  
United States District Judge

